

Sales/Use/Indirect:

South Dakota Administrative Guidance Addresses Taxation of Products Transferred Electronically

Tax Facts: Products Transferred Electronically, S.D. Dept. of Rev. (5/22). To “remove any confusion as to whether or not products transferred electronically are taxable,” the South Dakota Department of Revenue (Department) issued guidance explaining that vendors selling products transferred electronically “will continue to owe sales tax on receipts of products delivered to customers in South Dakota” because products transferred electronically generally are taxed as sales of tangible personal property under state law. Likewise, South Dakota consumers using products delivered electronically generally will continue to owe use tax on their cost of the products, if sales tax was not collected by the seller. The Department also explains that under state law, a product transferred electronically generally is any product obtained by the purchaser by means other than tangible storage media such as a CD, DVD, disk, or tape; however, a product transferred electronically does *not* include any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.

URL: <https://dor.sd.gov/media/argitevb/products-transferred-electronically.pdf>

Furthermore, the guidance clarifies that state sales tax may apply to products transferred electronically both when the purchaser has temporary use of the product and when the purchaser has permanent use of the product. Additionally, the sale of a digital code that may be utilized to obtain a product transferred electronically is subject to the same tax as the underlying product. The Department also notes that products transferred electronically may be subject to South Dakota sales or use tax “unless the purchaser has provided an exemption certificate showing they are purchasing the product for resale or are an exempt purchaser.” Some examples of products transferred electronically include music, books, videos, movies, newspapers, custom computer software, photos, and clip art. Please contact us with any questions.

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